

1 ALAN R. SMITH, ESQ.  
2 Nevada Bar No. 1449  
3 KEVIN A. DARBY, ESQ.  
4 Nevada Bar No. 7670  
5 Law Offices of Alan R. Smith  
505 Ridge Street  
Reno, Nevada 89501  
Telephone (775) 786-4579  
Facsimile (775) 786-3066  
Email: [mail@asmithlaw.com](mailto:mail@asmithlaw.com)

Electronically Filed February 28, 2007

Attorney for Lenders Protection Group

8 JANET L. CHUBB, ESQ.  
Nevada Bar. No. 176  
9 LOUIS M. BUBALA, III, ESQ.  
Nevada Bar No. 8974  
10 Jones Vargas  
11 100 W. Liberty St., 12<sup>th</sup> Floor  
Reno, NV 89501  
12 Telephone (775) 788-2205  
Facsimile (775) 786-1177  
Email: [jlc@jonesvargas.com](mailto:jlc@jonesvargas.com)

13 Attorney for The Jones Vargas  
Direct Lenders

UNITED STATES BANKRUPTCY COURT

## DISTRICT OF NEVADA

—ooOoo—

18 In Re:  
19 USA COMMERCIAL MORTGAGE  
COMPANY, et al.

Case Nos.:

BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

20 || Debtors.

## Affects:

23  All Debtors  
24  USA Commercial Mortgage Company  
 USA Capital Realty Advisors, LLC  
 USA Capital Diversified Trust Deed Fund, LLC  
25  USA Capital First Trust Deed Fund, LLC  
 USA Securities, LLC

## JOINTLY ADMINISTERED Chapter 11

Hearing Date: N/A  
Hearing Time: N/A

**DECLARATION OF KEVIN A.  
DARBY, ESQ. IN SUPPORT  
OF EMERGENCY EX PARTE  
MOTION FOR CONTINUANCE OF  
HEARING ON APPELLANTS'  
MOTION FOR LIMITED STAY  
PENDING APPEAL**

1 I, KEVIN A. DARBY, being first duly sworn, do depose and say under the penalty of  
 2 perjury:

3 1. I am a duly-licensed attorney and an associate of the Law Offices of Alan R.  
 4 Smith and represent the Lenders Protection Group (the "LPG") in the above captioned  
 5 bankruptcy case.

6 2. I have knowledge of and am competent to testify to the matters stated herein,  
 7 except to those matters stated upon information and belief, and as to those matters, I believe  
 8 them to be true.

9 3. On February 28, 2007, at approximately noon (PST), our office received  
 10 Appellees-Debtors *Opposition To Motion For Limited Stay Pending Appeal*, which was 73  
 11 pages long (6 pages of which consist of the caption, table of contents and table of  
 12 authorities) (the "Debtors' Stay Opposition").

13 4. Also on February 28, 2007, at approximately noon (PST), our office received  
 14 the the Official Committee of Equity Security Holders USA Capital First Trust Deed Fund,  
 15 LLC's, *Opposition To Motion For Limited Stay Pending Appeal* and a *Joinder* in the  
 16 Appellees-Debtors' Stay Opposition (the "FTDF Stay Opposition").

17 5. Given the breadth and scope of the Oppositions to the Stay Motion, Appellants  
 18 do not have sufficient time to file a formal written reply to the Debtors' Stay Opposition  
 19 and the FTDF Stay Opposition. The Oppositions, together with the supporting *Declaration*  
 20 of *Susan M. Smith*, total approximately 93 pages. It is impossible for Appellants to review,  
 21 digest and formulate responses to the numerous arguments propounded in opposition to the  
 22 Stay Motion in the less than 24 hours currently afforded to them. Appellants will be  
 23 substantially prejudiced if they are required to go forward with the hearing because they  
 24 will not be afforded a sufficient opportunity to brief the issues raised in the Oppositions and  
 25 prepare for oral argument.

26 6. At approximately 1:30 p.m. (PST) on February 28, 2007, I contacted M.s  
 27 Annette Jarvis, counsel for Appellees-Debtors, to request a stipulated continuance of the  
 28 Stay Hearing. Appellees' counsel indicated that she would discuss the matter with her

1 client and the Committees and determine whether a stipulated continuance was agreeable.  
2 *Id.* At approximately 3:30 p.m. (PST) I heard back from Appellees' Counsel, who  
3 explained that she was unable to reach all interested parties necessary to consider the  
4 requested continuance and, therefore could not agree to a continuance at this time.

5 I hereby swear under penalty of perjury that the assertions of this Declaration are  
6 true.

7 DATED: February 28, 2007.

8  
9 By: /s/ Kevin A. Darby, Esq.  
10 KEVIN A. DARBY, ESQ.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28